



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0814; FRL-9757-8]

Approval and Promulgation of Implementation Plans; Florida; 110(a)(2)(D)(i)(II) Infrastructure Requirement for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part, and disapprove in part, the State Implementation Plan (SIP) submissions, submitted by the State of Florida, through the Florida Department of Environmental Protection (DEP) on April 18, 2008, and September 23, 2009. This proposal addresses the Clean Air Act (CAA) requirements pertaining to prevention of significant deterioration (PSD) for the 1997 annual and 2006 24-hour fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS) infrastructure SIPs. The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an “infrastructure” SIP. EPA is proposing to approve in part, and disapprove in part the submission for Florida, that relates to adequate provisions prohibiting emissions that interfere with any other state’s required measures to prevent significant deterioration of its air quality. All other applicable infrastructure requirements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS associated with Florida are being addressed in separate rulemakings.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2012-0814, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: R4-RDS@epa.gov.
3. Fax: (404) 562-9019.
4. Mail: "EPA-R04-OAR-2012-0814," Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960.
5. Hand Delivery or Courier: Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R04-OAR-2012-0814. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through

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Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

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FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9043. Mr. Lakeman can be reached via electronic mail at lakeman.sean@epa.gov.

Table of Contents

- I. Background**
- II. What are States Required to Address under Sections 110(a)(2)(D)?**
- III. What is EPA's Analysis of How Florida Addressed Element (D)(i)(II) related to PSD?**
- IV. Proposed Action**
- V. Statutory and Executive Order Reviews**

I. Background

On July 18, 1997 (62 FR 38652), EPA established an annual PM_{2.5} NAAQS at 15.0 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) based on a 3-year average of annual mean PM_{2.5} concentrations. At that time, EPA also established a 24-hour NAAQS of 65 $\mu\text{g}/\text{m}^3$. *See* 40 CFR 50.7. On October 17, 2006 (71 FR 61144), EPA retained the 1997 annual PM_{2.5} NAAQS at 15.0 $\mu\text{g}/\text{m}^3$ based on a 3-year average of annual mean PM_{2.5} concentrations, and promulgated a new 24-hour NAAQS of 35 $\mu\text{g}/\text{m}^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be

submitted by states within three years after promulgation of a new or revised NAAQS. Sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs to EPA no later than July 2000 for the 1997 annual PM_{2.5} NAAQS, and no later than October 2009 for the 2006 24-hour PM_{2.5} NAAQS.

On March 4, 2004, Earthjustice submitted a notice of intent to sue related to EPA's failure to issue findings of failure to submit related to the "infrastructure" requirements for the 1997 annual PM_{2.5} NAAQS. On March 10, 2005, EPA entered into a consent decree with Earthjustice which required EPA, among other things, to complete a Federal Register notice announcing EPA's determinations pursuant to section 110(k)(1)(B) as to whether each state had made complete submissions to meet the requirements of section 110(a)(2) for the 1997 PM_{2.5} NAAQS by October 5, 2008. In accordance with the consent decree, EPA made completeness findings for each state based upon what the Agency received from each state for the 1997 PM_{2.5} NAAQS as of October 3, 2008.

On October 22, 2008, EPA published a final rulemaking entitled "Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter (PM_{2.5}) NAAQS" making a finding that each state had submitted or failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 PM_{2.5} NAAQS. *See* 73 FR 62902. For those states that did receive findings, the findings of failure to submit for all or a portion of a state's implementation plan established a 24-month deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address the outstanding SIP elements unless, prior to that time, the affected states submitted, and EPA approved, the required SIPs.

The findings that all or portions of a state's submission are complete established a 12-month deadline for EPA to take action upon the complete SIP elements in accordance with section 110(k). Florida's infrastructure submission was received by EPA on April 18, 2008, for the 1997 annual PM_{2.5} NAAQS and on September 23, 2009, for the 2006 24-hour PM_{2.5} NAAQS. Florida was among other states that did not receive findings of failure to submit because they had provided a complete submission to EPA to address the infrastructure elements for the 1997 PM_{2.5} NAAQS by October 3, 2008.

On July 6, 2011, WildEarth Guardians and Sierra Club filed an amended complaint related to EPA's failure to take action on the SIP submittal related to the "infrastructure" requirements for the 2006 24-hour PM_{2.5} NAAQS. On October 20, 2011, EPA entered into a consent decree with WildEarth Guardians and Sierra Club which required EPA, among other things, to complete a Federal Register notice of the Agency's final action either approving, disapproving, or approving in part and disapproving in part the Florida 2006 24-hour PM_{2.5} NAAQS Infrastructure SIP submittals addressing the applicable requirements of sections 110(a)(2)(A)-(H), (J)-(M), except for section 110(a)(2)(C) nonattainment area requirements and section 110(a)(2)(D)(i) visibility requirements. The rulemaking proposed through today's action is consistent with the terms of this consent decree.

Today's action is proposing to approve in part, and disapprove in part, Florida's infrastructure submission for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS addressing CAA section 110(a)(2)(D)(i) as it relates to adequate provisions prohibiting emissions that interfere with any other state's required measures to prevent significant deterioration of its air quality (referred to as "prong 3"). EPA has taken previous action on Florida's infrastructure submission

for the 1997 and 2006 PM_{2.5} NAAQS for sections 110(a)(2)(A)-(F), (H), (J)-(M), including other requirements of section 110(a)(2)(D)(i) in separate actions from today's rulemaking.

II. What are States Required to Address under Sections 110(a)(2)(D)?

Section 110(a)(2)(D) has two components, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Specifically, section 110(a)(2)(D)(i) has four components that require SIPs to include provisions prohibiting any source or other type of emissions activity in one state from: 1) contributing significantly to nonattainment maintenance of the NAAQS in another state, and 2) interfering with maintenance of the NAAQS in another state (collectively referred to as 110(a)(2)(D)(i)(I)); or interfering with measures required to 3) prevent significant deterioration of air quality in another state (prong 3), or 4) protect visibility in another state (collectively referred to as 110(a)(2)(D)(i)(II)). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement.

In previous actions, EPA has already taken action to address 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(ii) for Florida's infrastructure submissions for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Today's proposed rulemaking relates only to requirements related to prong 3 of 110(a)(2)(D)(i). More information on this requirement and EPA's rationale for today's proposal approving in part, and disapproving in part, this requirement for purposes of the 1997 annual and 2006 24-hour PM_{2.5} NAAQS is provided below.

III. What is EPA's Analysis of How Florida Addressed Element (D)(i)(II) related to PSD?

EPA's September 25, 2009, memorandum entitled "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM_{2.5}) National Ambient Air Quality Standards" provided guidance on addressing the infrastructure requirements required under sections 110(a)(1) and 110(a)(2) of the CAA with respect to the 2006 24-hour PM_{2.5} NAAQS. The 2009 Guidance describes that a state's PSD permitting program is the primary measure that such state must include in its SIP to prevent significant deterioration of air quality in accordance with prong 3 of section 110(a)(2)(D)(i). As described below, EPA has preliminarily determined that portions of Florida's infrastructure submissions are consistent with the 2009 Guidance, when considered in conjunction with the State's PSD program, and that a portion of the submissions is not.

At present, there are four regulations that are required to be adopted into the SIP to meet PSD-related infrastructure requirements. *See* Sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) of the CAA. These regulations are: 1) "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule" (November 29, 2005, 70 FR 71612) (hereafter referred to as the "Phase II Rule"); 2) "Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers; Final Rule" (May 16, 2008, 73 FR 28321) (hereafter referred to as the "NSR PM_{2.5} Rule"); 3) "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule" (June 3, 2010, 75 FR 31514) (hereafter referred to as the "GHG Tailoring Rule"); and, 4) "Final Rule on the Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}) – Increments, Significant Impact Levels (SILs) and Significant monitoring Concentration

(SMC); Final Rule” (October 20, 2010, 75 FR 64864) (hereafter referred to as “PM_{2.5} PSD Increment-SILs-SMC Rule (only as it relates to PM_{2.5} Increments)”). Specific details on the PSD requirements of these regulations can be found the respective final rules, however, a brief summary of each rule is provided below.

First, as part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases.¹ The Phase II Rule is relevant to today’s action. This rule, among other changes, revised the PSD regulations to recognize nitrogen oxide (NO_x) as an ozone precursor.

Second, the NSR PM_{2.5} Rule revised the NSR program to establish the framework for implementing preconstruction permit review for the PM_{2.5} NAAQS in both attainment areas and nonattainment areas. The PSD requirements included: 1) a provision that NSR permits address directly emitted PM_{2.5} and precursor pollutants; 2) a requirement establishing significant emission rates for direct PM_{2.5} and precursor pollutants (including sulfur dioxide (SO₂) and NO_x); 3) exceptions to the grandfathering policy for permits being reviewed under the PM₁₀ surrogate program; and, 4) a revision that states account for gases that condense to form particles (condensables) in PM_{2.5} and PM₁₀ emission limits in PSD permits.

Third, in the GHG Tailoring Rule, EPA tailored the applicability criteria that determine which GHG emission sources become subject to the PSD program of the CAA. *See* 75 FR 31514.

¹ EPA promulgated the Phase I Rule on April 30, 2004 entitled “Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1.” *See* 69 FR 23951.

Lastly, the PM_{2.5} PSD Increment-SILs-SMC Rule (only as it relates to PM_{2.5} increments) provided additional regulatory requirements under the PSD program regarding the implementation of the PM_{2.5} NAAQS for NSR by specifically establishing PM_{2.5} increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS.

The PSD requirements promulgated in the aforementioned regulations establish the framework for a comprehensive SIP PSD program which EPA has determined are necessary to comply with prong 3 of 110(a)(2)(D)(i). The following provides a listing of relevant EPA approvals for Florida SIP revisions to address PSD requirements.

1. EPA's approval of Florida's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements was published in the Federal Register on June 15, 2012 (77 FR 35862).
2. EPA's approval of Florida's NSR PM_{2.5} Rule was published in the Federal Register on September 19, 2012 (77 FR 58027).
3. EPA's approval of Florida's PSD/PM_{2.5} approving PM_{2.5} increments was published in the Federal Register on September 19, 2012 (77 FR 58027).

These three approval actions demonstrate that Florida's SIP-approved PSD program meets three of the four required regulatory elements necessary to satisfy prong 3 of section 110(a)(2)(D)(i).

With respect to the fourth necessary regulatory element - the GHG Tailoring Rule - Florida did not submit a SIP revision to adopt the appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions as promulgated in the GHG Tailoring Rule. Therefore, Florida's federally-approved SIP contained errors that resulted in its failure to address, or provide adequate legal authority for, the implementation of a GHG PSD program in Florida. In the GHG SIP Call,² EPA determined that the State of Florida's SIP was substantially inadequate to achieve CAA requirements because its existing PSD program does not apply to GHG-emitting sources. This rule finalized a SIP call for 15 state and local permitting authorities including Florida. EPA explained that if a state, identified in the SIP call, failed to submit the required corrective SIP revision by the applicable deadline, EPA would promulgate a FIP under CAA section 110(c)(1)(A) for that state to govern PSD permitting for GHG. On December 30, 2010, EPA promulgated a FIP³ because Florida failed to submit, by its December 22, 2010, deadline, the corrective SIP revision to apply its PSD program to sources of GHG consistent with the thresholds described in the GHG Tailoring rule. The FIP ensured that a permitting authority (i.e., EPA) would be available to issue preconstruction PSD permits to GHG-emitting sources in the State of Florida. EPA took these actions through interim final rulemaking, effective upon publication, to ensure the availability of a permitting authority – EPA – in Florida for GHG-emitting sources when they became subject to PSD on January 2, 2011.

² Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call, Final Rule, 75 FR 77698 (December 13, 2010).

³ Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan—Final Rule, 75 FR 82246 (December 30, 2010).

The Florida SIP currently does not provide adequate legal authority to address the GHG PSD permitting requirements at or above the levels of emissions set forth in the GHG Tailoring Rule, or at other appropriate levels. As a result, EPA has preliminarily determined that the Florida SIP does not satisfy a portions of section 110(a)(2)(D)(i) prong 3 for the 1997 and 2006 PM_{2.5} infrastructure requirements. Therefore, EPA is proposing disapproval of FDEP's submission for prong 3 of section 110(a)(2)(D)(i) as it relates relate to GHG PSD permitting requirements. EPA's proposed disapproval of this element does not result in any further obligation on the part of Florida, because EPA has already promulgated a FIP for the Florida PSD program to address permitting GHG at or above the GHG Tailoring Rule thresholds (76 FR 25178). Thus, today's proposed action to approve in part, and disapprove in part, FDEP's submission for prong 3 of section 110(a)(2)(D)(i), once final, will not require any further action by either FDEP or EPA.

IV. Proposed Action

As described above, EPA is proposing to approve in part, and disapprove in part, the SIP revision for Florida to incorporate provisions into the State's implementation plan to address prong 3 of section 110(a)(2)(D)(i) of the CAA for both the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. Specifically, EPA is proposing to approve the State's prong 3 of section 110(a)(2)(D)(i) submissions as they relate to the "Phase II Rule," the "NSR PM_{2.5} Rule," and the "PM_{2.5} PSD Increment-SILs-SMC Rule (only as it relates to PM_{2.5} increments)" because they are consistent with section 110 of the CAA. EPA also is proposing to disapprove Florida's submissions for the portion of the section 110(a)(2)(D)(i) prong 3 requirements related to the regulation of GHG emissions.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate Matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 21, 2012.

A. Stanley Meiburg,

Acting Regional Administrator,
Region 4.

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